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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/593,774	05/02/2007	Alain Foucault	612-46622X00	9114

20457

7590

09/10/2008

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EXAMINER

THERKORN, ERNEST G

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

09/10/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/593,774

Applicant(s)

FOUCAULT ET AL.

Examiner

Ernest G. Therkm

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 102(B) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over either Nunogaki (U.S. Patent No. 4,877,523) or Murayama (Journal of Chromatography, 239 (1982), pages 643-649). The claims are considered to read on each of Nunogaki (U.S. Patent No. 4,877,523) and Murayama (Journal of Chromatography, 239 (1982), pages 643-649). However, if a difference exists between the claims and either Nunogaki (U.S. Patent No. 4,877,523) or Murayama (Journal of Chromatography, 239 (1982), pages 643-649), it would reside in optimizing the steps of either Nunogaki (U.S. Patent No. 4,877,523) or Murayama (Journal of Chromatography, 239 (1982), pages 643-649). It would have been obvious to optimize the steps of each of Nunogaki (U.S. Patent No. 4,877,523) and Murayama (Journal of Chromatography, 239 (1982), pages 643-649) to enhance separation.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Nunogaki (U.S. Patent No. 4,877,523) or Murayama (Journal of Chromatography, 239 (1982), pages 643-649) in view of GEPEA Resultants 2001 Internet Article, Online

2 March 2003, pages 1-7 and Google Translation of the first three full paragraphs of page 5 of GEPEA Resultants 2001 Internet Article, Online 2 March 2003, pages 1-7. GEPEA Resultants 2001 Internet Article, Online 2 March 2003, pages 1-7 and Google Translation of the first three full paragraphs of page 5 of GEPEA Resultants 2001 Internet Article, Online 2 March 2003, pages 1-7 are considered to be a single reference. At best, the claims differ from either Nunogaki (U.S. Patent No. 4,877,523) or Murayama (Journal of Chromatography, 239 (1982), pages 643-649) in reciting varying the size. GEPEA Resultants 2001 Internet Article, Online 2 March 2003, pages 1-7 and Google Translation of the first three full paragraphs of page 5 of GEPEA Resultants 2001 Internet Article, Online 2 March 2003, pages 1-7 discloses changing cell size allows for varying the volume the device handles. It would have been obvious to vary the size of the cell in either Nunogaki (U.S. Patent No. 4,877,523) or Murayama (Journal of Chromatography, 239 (1982), pages 643-649) because GEPEA Resultants 2001 Internet Article, Online 2 March 2003, pages 1-7 and Google Translation of the first three full paragraphs of page 5 of GEPEA Resultants 2001 Internet Article, Online 2 March 2003, pages 1-7 discloses changing cell size allows for varying the volume the device handles.

The remarks that Nunogaki (U.S. Patent No. 4,877,523) does not have the recited cell dimension. However, as can be seen from Nunogaki (U.S. Patent No. 4,877,523)'s Figures 1 and 2 cassettes 13a and 13b, i.e. cells, are at least twice as high as they are long and wide. As such, the claims read on Nunogaki (U.S. Patent No. 4,877,523).

The remarks that Murayama (Journal of Chromatography, 239 (1982), pages 643-649) does not have the recited cell dimensions. However, as can be seen from Murayama (Journal of Chromatography, 239 (1982), pages 643-649)'s Figures 3 and 4 on page 644, column cartridges 7, i.e. cells, are at least twice as high as they are long and wide. As such, the claims read on Murayama (Journal of Chromatography, 239 (1982), pages 643-649).

The remarks urge that GEPEA Resultants 2001 Internet Article, Online 2 March 2003, pages 1-7 and Google Translation of the first three full paragraphs of page 5 of GEPEA Resultants 2001 Internet Article, Online 2 March 2003, pages 1-7 do not give a reason to modify either Nunogaki (U.S. Patent No. 4,877,523) or Nunogaki (U.S. Patent No. 4,877,523). However, GEPEA Resultants 2001 Internet Article, Online 2 March 2003, pages 1-7 and Google Translation of the first three full paragraphs of page 5 of GEPEA Resultants 2001 Internet Article, Online 2 March 2003, pages 1-7 discloses changing cell size allows for varying the volume the device handles. Since there are only a finite number of ways to modify cell size, such as increasing the width, length, or height of the cell, increasing the height of the cell is considered to be taught. It would have been obvious to increase the height of either Nunogaki (U.S. Patent No. 4,877,523) or Nunogaki (U.S. Patent No. 4,877,523) because GEPEA Resultants 2001 Internet Article, Online 2 March 2003, pages 1-7 and Google Translation of the first three full paragraphs of page 5 of GEPEA Resultants 2001 Internet Article, Online 2 March 2003, pages 1-7 discloses changing cell size allows for varying the volume the device handles.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication should be directed to E. Therkorn at telephone number (571) 272-1149. The official fax number is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free).

/Ernest G. Therkorn/
Ernest G. Therkorn
Primary Examiner
Art Unit 1797

EGT
September 8, 2008